

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

OFFICE OF COMPLIANCE & INSPECTION

IN RE: Ahmed Choudhry

FILE NO.: UST 2014-24-00535

NOTICE OF VIOLATION

A. Introduction

Pursuant to Sections 42-17.1-2(21) and 42-17.6-3 of the Rhode Island General Laws, as amended, (“R.I. Gen. Laws”) you are hereby notified that the Director of the Department of Environmental Management (the “Director” of “DEM”) has reasonable grounds to believe that the above-named party (“Respondent”) has violated certain statutes and/or administrative regulations under DEM’s jurisdiction.

B. Facts

- (1) The property is located at 5300 Post Road, Assessor’s Plat 5, Lot 96 in the town of Charlestown, Rhode Island (the “Property”). The Property includes a former gasoline service station (the “Facility”).
- (2) ASAD ALI, LLC owns the Property.
- (3) On 17 January 2014 the Rhode Island Secretary of State revoked the *Certificate of Organization/Registration* for ASAD ALI, LLC. The Respondent is the last known president of the corporation.
- (4) Underground storage tanks (“USTs” or “tanks”) are located on the Property, which tanks were used for storage of petroleum products and which are subject to the DEM’s *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials* (the “UST Regulations”).
- (5) The Facility is registered with the DEM in accordance with the DEM’s UST Regulations and is identified as UST Facility No. 00535.
- (6) The USTs are registered with the DEM as follows:

UST ID No.	Date Installed	Capacity	Substance Stored
002	December 1988	8000 gallons	Gasoline
004	December 1988	8000 gallons	Gasoline

- (7) On 7 March 2013 the DEM received a site investigation report for the Property, which was prepared by Proulx Environmental, LLC (the “SIR”). The SIR revealed that 1 groundwater monitoring well on the Property has levels of ethylbenzene and toluene in the groundwater that exceed the groundwater standards in the DEM’s *Groundwater Quality Rules*.
- (8) On 2 April 2013 the DEM issued a letter to the Respondent that required the Respondent to implement a quarterly groundwater monitoring program and submit quarterly analytical reports to the DEM (the “Corrective Action Plan”).
- (9) On or about 6 December 2013 the DEM issued an invoice to the Respondent for payment of registration fees for the USTs. The invoice stated that the registration fees have not been paid since calendar year 2006 and that the Respondent owes registration fees and late fees of \$1,540 (the “Outstanding Fees”). The invoice required immediate payment of the Outstanding Fees.
- (10) On 20 February 2014, the DEM inspected the Facility and reviewed the Facility file. Based on the inspection and file review, the DEM determined that the USTs are abandoned.
- (11) As of the date of this Notice of Violation (“NOV”), the Respondent has failed to implement the Corrective Action Plan.
- (12) As of the date of this NOV, the Respondent has failed to pay the Outstanding Fees.

C. Violation

Based on the foregoing facts, the Director has reasonable grounds to believe that you have violated the following statutes and/or regulations:

- (1) **DEM’s UST Regulations, Rules 6.10 and 6.13** – requiring owners/operators to pay UST registration fees and late fees assessed by the DEM.
- (2) **DEM’s UST Regulations, Rule 12.02** – requiring all owners of UST systems to investigate and clean up any spills, leaks, or releases in accordance with the DEM’s regulations.
- (3) **DEM’s UST Regulations, Rule 13.02(A)** – prohibiting the abandonment of USTs.
- (4) **DEM’s UST Regulations, Rule 13.05** – requiring the permanent closure of any USTs that are abandoned.

D. Order

Based upon the violations alleged above and pursuant to R.I. Gen. Laws Section 42-17.1-2(21), you are hereby ORDERED to:

- (1) **IMMEDIATELY** implement the Corrective Action Plan.
- (2) **Within 60 days of receipt of this NOV** submit to the DEM's Office of Waste Management ("OWM") a check in the amount of \$1,540 made payable to the "General Treasurer, State of Rhode Island."
- (3) **Within 90 days of receipt of this NOV** submit a permanent closure application to the OWM and complete the removal of the USTs in full compliance with Section 13.00 of the DEM's UST Regulations and Section 13.00 of the DEM's *Oil Pollution Control Regulations* (the "OPC Regulations").
- (4) **Within 30 days of the removal of the USTs** properly dispose of any contaminated soil excavated during the closure and, within 10 days of the soil disposal, submit documentation of disposal to the OWM in accordance with Section 13 of the DEM's OPC Regulations.
- (5) **Within 45 days of the removal of the USTs** submit to the OWM a closure assessment report, prepared by a qualified environmental consultant, in accordance with Section 13.11 of the DEM's UST Regulations, the DEM's *UST Closure Assessment Guidelines* and Section 13.00 of the DEM's OPC Regulations (the "Closure Report").
- (6) The Closure Report is subject to the DEM's review and approval. Upon review, the DEM shall provide written notification to you either granting formal approval or requiring further investigation and/or corrective actions in accordance with Section 12.00 of DEM's UST Regulations. You must comply with any required investigation and/or corrective actions in the timeline specified by the DEM.

E. Penalty

- (1) Pursuant to R.I. Gen. Laws Section 42-17.6-2, the following administrative penalty, as more specifically described in the attached penalty summary and worksheets, is hereby ASSESSED, jointly and severally, against each named respondent:

Thirteen Thousand Two Hundred Seventy Dollars (\$13,270)

- (2) The proposed administrative penalty is calculated pursuant to the DEM's *Rules and Regulations for Assessment of Administrative Penalties*, as amended, and must be paid to the DEM within 30 days of your receipt of this NOV. Payment shall be in the form of a certified check, cashier's check or money order made payable to the "General Treasury - Water & Air Protection Program Account" and

shall be forwarded to the DEM Office of Compliance and Inspection, 235 Promenade Street, Suite 220, Providence, Rhode Island 02908-5767.

- (3) Penalties assessed against the Respondent in this NOV are penalties payable to and for the benefit of the State of Rhode Island and are not compensation for actual pecuniary loss.
- (4) If any violation alleged herein shall continue, then each day during which the violation occurs or continues shall constitute a separate offense and the penalties and/or costs for that violation shall continue to accrue in the manner set forth in the attached penalty summary and worksheets. The accrual of additional penalties and costs shall be suspended if the DEM determines that reasonable efforts have been made to comply promptly with this NOV.

F. Right to Administrative Hearing

- (1) Pursuant to R.I. Gen. Laws Chapters 42-17.1, 42-17.6, 42-17.7 and 42-35, each named respondent is entitled to request a hearing before the DEM Administrative Adjudication Division regarding the allegations, orders and/or penalties set forth in Sections B through E above. All requests for hearing MUST:
 - (a) Be in writing. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.6-4(b);
 - (b) Be **RECEIVED** by the DEM's Administrative Adjudication Division, at the following address, within 20 days of your receipt of this NOV. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and 42-17.7-9:

Administrative Clerk
DEM - Administrative Adjudication Division
One Capitol Hill, 2ND Floor
Providence, RI 02903
 - (c) Indicate whether you deny the alleged violations and/or whether you believe that the administrative penalty is excessive. See R.I. Gen. Laws Section 42-17.6-4(b); **AND**
 - (d) State clearly and concisely the specific issues which are in dispute, the facts in support thereof and the relief sought or involved, if any. See Rule 7.00(b) of the DEM's *Administrative Rules of Practice and Procedure for the Administrative Adjudication Division of Environmental Matters*.

- (2) A copy of each request for hearing must also be forwarded to:

Joseph J. LoBianco, Esquire
DEM - Office of Legal Services
235 Promenade Street, Suite 425
Providence, RI 02908-5767

- (3) Each named respondent has the right to be represented by legal counsel at all administrative proceedings relating to this matter.
- (4) Each respondent must file a separate and timely request for an administrative hearing before the DEM's Administrative Adjudication Division as to each violation alleged in the written NOV. If any respondent fails to request a hearing in the above-described time or manner with regard to any violation set forth herein, then this NOV shall automatically become a Final Compliance Order enforceable in Superior Court as to that respondent and/or violation and any associated administrative penalty proposed in the NOV shall be final as to that respondent. See R.I. Gen. Laws Sections 42-17.1-2(21)(i) and (v) and 42-17.6-4(b) and (c).
- (5) Failure to comply with this NOV may subject each respondent to additional civil and/or criminal penalties.
- (6) An original signed copy of this NOV is being forwarded to the town of Charlestown, wherein the Property is located, to be recorded in the Office of Land Evidence Records pursuant to R.I. Gen. Laws Chapter 34-13 and Section 42-17.1-2 (31), as amended.
- (7) This NOV does not preclude the Director from taking any additional enforcement action nor does it preclude any other local, state, or federal governmental entities from initiating enforcement actions based on the acts or omissions described herein.

If you have any legal questions, you may contact (or if you are represented by an attorney, please have your attorney contact) Joseph J. LoBianco at the DEM Office of Legal Services at (401) 222-6607. All other inquiries should be directed to Tracey Tyrrell of the DEM Office of Compliance and Inspection at (401) 222-1360 ext. 7407.

Please be advised that any such inquiries do not postpone, eliminate, or otherwise extend the need for a timely submittal of a written request for a hearing, as described in Section F above.

FOR THE DIRECTOR

David E. Chopy, Chief
DEM Office of Compliance and Inspection

Date: _____

CERTIFICATION

I hereby certify that on the _____ day of _____
the within Notice of Violation was forwarded to:

Ahmed Choudhry
P.O. Box 126
Norwich, CT 06360

by Certified Mail.



ADMINISTRATIVE PENALTY SUMMARY

Program: OFFICE OF COMPLIANCE AND INSPECTION, UST
 File No.: UST 2014-24-00535
 Respondent: Ahmed Choudhry

GRAVITY OF VIOLATION					
SEE ATTACHED "PENALTY MATRIX WORKSHEETS."					
VIOLATION No. & CITATION	APPLICATION OF MATRIX		PENALTY CALCULATION		AMOUNT
	Type	Deviation	Penalty from Matrix	Number or Duration of Violations	
C (2) – Failure to perform quarterly groundwater monitoring	Type I <i>(\$25,000 Max. Penalty)*</i>	Moderate	\$6,250	1 violation	\$6,250
C (3) and (4) – Abandonment of underground storage tanks	Type I <i>(\$25,000 Max. Penalty)*</i>	Moderate	\$6,250	1 violation	\$6,250
<i>SUB-TOTAL</i>					\$12,500

*Maximum Penalties represent the maximum penalty amounts per day, per violation.

ECONOMIC BENEFIT FROM NON-COMPLIANCE		
COSTS OF COMPLIANCE, EQUIPMENT, O&M, STUDIES OR OTHER DELAYED OR AVOIDED COSTS, INCLUDING INTEREST AND/OR ANY COMPETITIVE ADVANTAGE DERIVED OVER ENTITIES THAT ARE IN COMPLIANCE. NOTE: ECONOMIC BENEFIT MUST BE INCLUDED IN THE PENALTY UNLESS:		
- THERE IS NO IDENTIFIABLE BENEFIT FROM NON-COMPLIANCE; OR - THE AMOUNT OF ECONOMIC BENEFIT CANNOT BE QUANTIFIED.		
DESCRIPTION OF BENEFIT	CALCULATION	AMOUNT
Interest earned by delaying cost of tank closure	Delayed one time non-depreciable expenditure of \$25,000 (average cost to remove multiple USTs at a typical facility)	\$770
<i>SUB-TOTAL</i>		\$770

COST RECOVERY
ADDITIONAL OR EXTRAORDINARY COSTS INCURRED BY THE DIRECTOR DURING THE INVESTIGATION, ENFORCEMENT AND RESOLUTION OF AN ENFORCEMENT ACTION (EXCLUDING NON-OVERTIME PERSONNEL COSTS), FOR WHICH THE STATE IS NOT OTHERWISE REIMBURSED.
A review of the record in this matter has revealed that the DEM has not incurred any additional or extraordinary costs during the investigation, enforcement and resolution of this enforcement action (excluding non-overtime personnel costs), for which the State is not otherwise reimbursed.

TOTAL PENALTY PROPOSED UNDER PENALTY REGULATIONS = \$13,270

PENALTY MATRIX WORKSHEET

CITATION: Failure to perform quarterly groundwater monitoring
 VIOLATION No.: C (2)

TYPE		
<p style="text-align: center;"><u>X</u> TYPE I</p> <p style="text-align: center;"><u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">TYPE II</p> <p style="text-align: center;"><u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p style="text-align: center;">TYPE III</p> <p style="text-align: center;"><u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>
DEVIATION FROM THE STANDARD		
THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.		
<p>FACTORS CONSIDERED:</p> <p>Taken from Section 10 (a) (2) of the DEM <i>Rules and Regulations for Assessment of Administrative Penalties</i></p> <p>(A) The extent to which the act or failure to act was out of compliance: The Respondent failed to perform quarterly monitoring as required by the DEM to further investigate the nature and extent of the volatile organic compound contamination that was discovered during the 2013 site investigation.</p> <p>(B) Environmental conditions: The facility is located in a developed area with potential vapor receptors including residential and commercial structures. The facility is located in a GA groundwater classification zone, which are groundwater resources designated to be suitable for drinking water use without treatment. The USTs are installed in a wellhead protection area for several non-community, transient, water supply wells and within 840 feet of a wellhead protection area for a community water supply well. The USTs are installed within 40 feet of wetlands associated with Foster Cove. The facility is located in the southwest coastal waters watershed.</p> <p>(C) Amount of the pollutant: Groundwater samples obtained from monitoring well PE-101 revealed concentrations of ethyl benzene and toluene that exceeded the GA groundwater standards in the DEM's groundwater quality rules.</p> <p>(D) Toxicity or nature of the pollutant: Petroleum products are capable of causing significant soil and groundwater contamination if released to the environment.</p> <p>(E) Duration of the violation: 1 year. The first quarterly monitoring report was due in June 2013.</p> <p>(F) Areal extent of the violation: Considered, but not utilized for this calculation.</p>		
(continued)		

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to prevent the non-compliance by submitting the required quarterly groundwater analytical reports to the DEM. The Respondent has taken no apparent steps to mitigate the non-compliance.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** The Respondent was previously cited by the DEM for violations of the DEM's UST Regulations in informal notices issued on 29 February 2012, 17 May 2012, 10 May 2012, 2 October 2013, 3 October 2013, 7 November 2013 and 30 January 2014 and a formal notice of violation issued on 25 February 2014. The notices pertained to this facility and two other facilities in the cities of Cranston and Pawtucket.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** As the property owner, the Respondent had full control over the occurrence of the violation. The DEM notified the Respondent of the investigatory requirements in the letter dated 2 April 2013.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u> X </u> MODERATE	MINOR
--------------	------------------------------	--------------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$6,250	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250

PENALTY MATRIX WORKSHEET

CITATION: Abandonment of underground storage tanks
 VIOLATION Nos.: C (3) and (4)

TYPE		
<p><u>X</u> TYPE I <u>DIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p>TYPE II <u>INDIRECTLY</u> related to protecting health, safety, welfare or environment.</p>	<p><u> </u> TYPE III <u>INCIDENTAL</u> to protecting health, safety, welfare or environment.</p>

DEVIATION FROM THE STANDARD
 THE DEGREE TO WHICH A PARTICULAR VIOLATION IS OUT OF COMPLIANCE WITH THE REQUIREMENT VIOLATED.

FACTORS CONSIDERED:

Taken from Section 10 (a) (2) of the DEM *Rules and Regulations for Assessment of Administrative Penalties*

- (A) **The extent to which the act or failure to act was out of compliance:** The Respondent has maintained the USTs in an abandoned state since taking title to the property on 31 December 2012. Abandonment of USTs is expressly prohibited by the DEM's UST Regulations. Abandoned USTs present a threat to the environment if they are not evacuated of their contents or if persons attempt to re-use them after an extended period of abandonment.
- (B) **Environmental conditions:** The facility is located in a developed area with potential vapor receptors including residential and commercial structures. The facility is located in a GA groundwater classification zone, which are groundwater resources designated to be suitable for drinking water use without treatment. The USTs are installed in a wellhead protection area for several non-community, transient, water supply wells and within 840 feet of a wellhead protection area for a community water supply well. The USTs are installed within 40 feet of wetlands associated with Foster Cove. The facility is located in the southwest coastal waters watershed.
- (C) **Amount of the pollutant:** Considered, but not utilized for this calculation.
- (D) **Toxicity or nature of the pollutant:** The volatile nature of gasoline presents both a public health hazard (due to the potential inhalation of benzene vapors) and a potential public safety hazard (due to the potential for explosion). Benzene, a component of gasoline, is a known carcinogen. Petroleum products are capable of causing significant soil and groundwater contamination if released to the environment.
- (E) **Duration of the violation:** 1 ½ years. The Respondent has maintained the USTs in an abandoned state since taking title to the property on 31 December 2012.
- (F) **Areal extent of the violation:** Considered, but not utilized for this calculation.

(continued)

(continued from the previous page)

- (G) **Whether the person took reasonable and appropriate steps to prevent and/or mitigate the noncompliance:** The Respondent failed to prevent the non-compliance by permanently closing the USTs within 180 days of the date that they were removed from service. The Respondent has taken no apparent steps to mitigate the non-compliance despite receiving a certified letter from the DEM dated 20 February 2014 requiring that he do so.
- (H) **Whether the person has previously failed to comply with any regulations, order, statute, license, permit or approval issued or adopted by the Department, or any law which the Department has the authority or responsibility to enforce:** The Respondent was previously cited by the DEM for violations of the DEM's UST Regulations in informal notices issued on 29 February 2012, 17 May 2012, 10 May 2012, 2 October 2013, 3 October 2013, 7 November 2013 and 30 January 2014 and a formal notice of violation issued on 25 February 2014. The notices pertained to this facility and two other facilities in the cities of Cranston and Pawtucket.
- (I) **The degree of willfulness or negligence, including but not limited to, how much control the violator had over the occurrence of the violation and whether the violation was foreseeable:** As the property owner, the Respondent had full control over the occurrence of the violation. Abandonment of USTs is expressly prohibited by the DEM's UST Regulations.
- (J) **Any other factor(s) that may be relevant in determining the amount of a penalty:** Considered, but not utilized for this calculation.

MAJOR	<u>X</u> MODERATE	MINOR
--------------	--------------------------	--------------

Penalty Matrix where the applicable statute provides for a civil penalty up to \$ 25,000		TYPE I	TYPE II	TYPE III
DEVIATION FROM STANDARD	MAJOR	\$12,500 to \$25,000	\$6,250 to \$12,500	\$2,500 to \$6,250
	MODERATE	\$6,250 to \$12,500 \$6,250	\$2,500 to \$6,250	\$1,250 to \$2,500
	MINOR	\$2,500 to \$6,250	\$1,250 to \$2,500	\$250 to \$1,250